

R.D. # 0001-99  
Moonachie, NJ

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**PRESIDENT CONTAINER, INC.<sup>1</sup>**

Employer

and

CASE 22-RC-11667

**PRESIDENT CONTAINER  
EMPLOYEES ASSOCIATION<sup>2</sup>**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>3</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>4</sup>

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The name of the Petitioner appears as amended at the hearing.

<sup>3</sup> A brief filed by the Employer has been fully considered. No other briefs were filed.

<sup>4</sup> The sufficiency of the Petitioner's showing of interest is an administrative matter not subject to litigation. *O.D. Jennings and Company*, 68 NLRB 516 (1946). I am administratively satisfied that the Petitioner's showing of interest is adequate.

2. The Employer is engaged in commerce within the meaning of the Act and will effectuate the purposes of the Act to assert jurisdiction herein.<sup>5</sup>
3. The labor organizations involved claim to represent certain employees of the Employer.<sup>6</sup>
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.<sup>7</sup>
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.<sup>8</sup>

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<sup>5</sup> The Employer, a New York corporation, is engaged in the manufacture and sale of corrugated boxes at its Moonachie and Woodridge, New Jersey locations, its only facilities involved herein.

<sup>6</sup> Production Workers Union Local 148, a/w A.U.A.N.P.W., AFL-CIO, herein called the Intervenor, was permitted to intervene based on its collective bargaining agreement with the Employer effective from March 10, 1996 through March 9, 1999. The parties stipulated and I find that the Intervenor is a labor organization within the meaning of Section 2(5) of the Act. The status of the Petitioner as a labor organization within the meaning of Section 2(5) of the Act will be discussed, *infra*.

<sup>7</sup> As the petition herein was filed on January 7, 1999, I find that it is timely filed with respect to the existing collective bargaining agreement. In this connection it was filed more than 60 days but less than 90 days before the expiration date of the contract. *Leonard Wholesale Meats, 136 NLRB 1000 (1962)*.

<sup>8</sup> The unit description is in accord with the stipulation of the parties which I find to be appropriate for purposes of collective bargaining. There are approximately 280 to 290 employees in the unit. The petition, as originally filed on January 7, 1999, only designated the Employer's Moonachie, New Jersey facility. At the hearing in this matter, the Petitioner amended its petition to include the employees employed at the Employer's Woodridge, New Jersey facility. It is undisputed that the Intervenor represents the employees at both locations in a combined unit and that the collective bargaining agreement covers this unit. There are approximately 255 to 265 employees employed at the Moonachie location and 25 at the Woodridge location. The Intervenor contends that this amendment renders the petition time-barred as it was amended during the insulated period immediately preceding the expiration date of the contract. This contention is without merit as I find, that the Employer, its operations and the employees were contemplated under the original

All full-time and regular part-time production employees, including shipping and receiving employees and high-low drivers employed by the Employer at its Moonachie and Woodridge, New Jersey facilities, excluding office clerical employees, maintenance employees, sales employees, garage mechanics, boiler operators, maintenance mechanics, plant clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.

The Intervenor declined to stipulate that the Petitioner is a labor organization under the Act.<sup>9</sup> With regard to the labor organization status of the Petitioner, there are essentially only two requirements for a party to meet to achieve the status of a labor organization as defined by Section 2(5) of the Act: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. *Alto Plastics Manufacturing Corp.*, 136 NLRB 850 (1962). In this regard, the record reveals that the Petitioner, at the time of the hearing, had no collective bargaining agreements with any employers, however, employees have participated in the formation of the Petitioner and will be permitted to participate in its functions. The record also disclosed that the Petitioner exists for the purpose of dealing with employers on behalf of employees concerning wages, rates of pay, hours and working conditions. In addition, the Petitioner has promulgated a constitution and by-laws which govern its operations and admits employees into membership. In these circumstances, I find that the Petitioner is a labor organization under Section 2(5) of the Act. *Ana Colon, Inc.* 266 NLRB 611, 612; *Alto Plastics Manufacturing Corp.*, *supra*. There remains for

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petition and that the amendment does not substantially enlarge the character or size of the unit or the number of employees covered. Therefore, I find that the original date of the filing of the petition is controlling. *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1000 fn.12; *Illinois Bell Telephone Co.*, 77 NLRB 1073 (1948).

<sup>9</sup> The Employer took no position on this issue.

consideration the Intervenor's contention that the Petitioner is a "front" for a local of the International Paperworkers Union in order to circumvent a "no-raid" agreement within the AFL-CIO under Article 20. The record is devoid of any probative evidence that the Petitioner is a "front" for any other union. There is no evidence that the Petitioner is affiliated with the AFL-CIO or any other organization, or that any of the Petitioner's officers or officials have any connection with the Paperworkers. The Petitioner validly filed the instant petition and participated in this proceeding, whereas there is no evidence that the Paperworkers participated in the hearing or that it was the real party in interest in this matter. It is the Petitioner's willingness itself to function as a bargaining agent which is the controlling factor in these circumstances. *Penn-Keystone Realty Corp., 191 NLRB 800 (1971)*. Accordingly, I find no evidence that the Petitioner has an ulterior purpose as to the representation of the petitioned-for employees. Cf. *Bausch Lomb Optical Company, 108 NLRB 1555 (1954)*.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote

if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **President Container Employees Association; Production Workers Union Local 148, a/w A.U.A.N.P.W., AFL-CIO; or Neither.**

### LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).* Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, three (3) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility, 315 NLRB 359 (1994).* In order to be timely filed, such list must be received in the NLRB Region 22, 20 Washington Place, 5<sup>th</sup> Floor, Newark, New Jersey 07102, on or before February 11, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

**RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by February 18, 1999.

Signed at Newark, New Jersey this 4<sup>th</sup> day of February 1999.

\_\_\_\_/s/William A. Pascarell

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William A. Pascarell, Regional Director  
NLRB Region 22  
20 Washington Place, 5<sup>th</sup> Floor  
Newark, New Jersey 07102

